



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2005

Ms. Cynthia Villarreal-Reyna
Section Chief, Agency Counsel
Legal and Compliance Division, MC 110-1A
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

OR2005-02194

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219322

The Texas Department of Insurance (the "department") received a request for certain information concerning a specific insurance company. You claim that portions of the requested records are excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

This office has found that personal financial information is generally excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common-law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). Thus, we find that the decision to obtain life insurance is a private, financial decision that is excepted from disclosure under common-law privacy pursuant to section 552.101 of the Government Code. Because the decision to purchase life insurance is protected by common law privacy, the department must redact the insureds' identifying information. Identifying information includes the insured's name, address, policy and bank account numbers, and the beneficiary's name if the beneficiary's name or relationship with the insured reveals the identity of the insured. Thus, we agree with most of the department's markings on the submitted documents.² You have failed, however, to establish that some of the marked information identifies the insureds. This information, therefore, must be released.

You also claim that the biographical affidavit form contains a social security number that is excepted from disclosure under section 552.101 of the Government Code. This section encompasses section 58.001 of the Occupations Code, which provides that the "social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code."³ Occ. Code § 58.001. You state that the department obtained the social security number "in connection with an application for a certificate of authority to engage in the business of insurance in the State of Texas." Based on this representation, we agree that the social security number you have marked is confidential under section 58.001 of the Occupations Code, and must be withheld from disclosure under section 552.101 of the Government Code.

²Because our ruling is dispositive on this issue, we not need address your section 552.136 argument.

³There are currently two different sections of the Occupations Code denominated as section 58.001. The section relating to "[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession" was renumbered from section 56.001 to section 58.001 in 2003. See Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Gen. Laws 4140, 4146.

In summary, the department must withhold the marked insureds' identifying information pursuant to section 552.101 of the Government Code and common-law privacy. The social security number in the biographical affidavit form is confidential under section 58.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

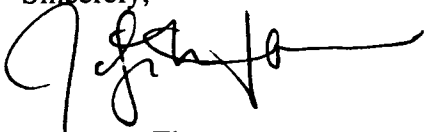
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Thompson', with a long horizontal flourish extending to the right.

Jacklyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 219322

Enc. Submitted documents

c: Ms. Sue M. Lee
Henslee Fowler Hepworth & Schwartz, L.L.P.
818 Congress Avenue
Austin, Texas 78701
(w/o enclosures)